

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO.: _____

R.S., a minor child, by and through his :
Next Friend and/or Guardian, :
DAVID BAZERMAN, ESQ. :
Plaintiff :
vs. :
KIDS IN DISTRESS, INC., CHILDNET, :
INC., and MICHAEL MCGUIGAN :
Defendants.

COMPLAINT

The Plaintiff, R.S., through his Next Friend and/or Guardian, David Bazerman, Esq., by and through undersigned counsel, hereby sues the Defendants, KIDS IN DISTRESS, INC., CHILDNET, INC., and MICHAEL MCGUIGAN and states:

JURISDICTION AND VENUE

1. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00) exclusive of attorney's fees, interests or costs, which claims are within the jurisdiction of the Circuit Court.
2. Venue is appropriate in Broward County because the cause of action accrued there and Defendants KIDS IN DISTRESS, INC. and CHILDNET, INC. reside in Broward County, Florida pursuant to Fla. Stat. § 47.011.

3. Jurisdiction over the person Defendant MICHAEL MCGUIGAN is appropriate in Broward County because at all times material hereto, he committed tortious act(s) to the minor Plaintiff, R.S., in Broward County, Florida pursuant to Fla. Stat. § 48.193(1)(a)(2).

THE PARTIES

4. Plaintiff (hereinafter “R.S.”), who was born in May of 2003, was a minor child placed in the custody of the State of Florida on or about August 25, 2010.

5. Due to R.S.’s status as a minor child, he is filing this action through his Next Friend and/or Guardian, David Bazerman, Esq.

6. Due to the nature of the allegations as set forth herein below, which include allegations of sexual abuse, R.S. is filing this action using a pseudonym.

7. At all times material hereto, Defendant CHILDNET, INC., (hereinafter “CHILDNET”) was a Florida Corporation operating its business in Broward County, Florida.

8. At all times material hereto, CHILDNET was the lead agency for coordination and delivery of community-based foster care, placement, and related services in Broward County, Florida pursuant to Fla. Stat. § 409.1671, and operated under a contract with the Florida Department of Children and Families (hereinafter “DCF”) to provide such services to children in the custody of the state, including R.S.

9. At all times material hereto, Defendant, KIDS IN DISTRESS, INC. (hereinafter “KID”) was a Florida Corporation operating its business in Broward County, Florida.

10. At all times material hereto, CHILDNET subcontracted with KID pursuant to Fla. Stat. § 409.1671, to provide a comprehensive array of foster home care licensing, re-licensing, and related services in Broward County, Florida, including but not limited to, recruitment, screening,

training, tracking, licensing, re-licensing, support, management and oversight of foster homes in Broward County, Florida.

11. At all times material hereto, CHILDNET was continually required to approve various licensing recommendations and to monitor the performance of KID regarding the provision of foster care and related services, including but not limited to, foster home licensing and re-licensing services in Broward County, Florida, to ensure compliance with all Florida Statutes, Florida Administrative Code rules, DCF Operating Procedures, CHILDNET Operating Procedures, and the common law, to ensure the health, welfare, and safety of children in the custody of the state, including R.S.

12. At all times material hereto, Defendant, MICHAEL MCGUIGAN (hereinafter “MCGUIGAN”) was a natural person licensed as a foster parent in Broward County, Florida and acting as a foster parent to R.S., a foster child.

13. At all times material hereto, Defendants KIDS and CHILDNET negligently licensed and re-licensed MCGUIGAN as a foster parent, even though he was an alleged child molester and lacked good moral character, and allowed R.S. to be placed in his home from approximately August 25, 2010 to May 6, 2011, allowing for the minor to be sexually abused and molested by MCGUIGAN.

GENERAL ALLEGATIONS

14. On or before May 6, 2008, MCGUIGAN submitted an application to KID to become a licensed foster parent in Broward County, Florida.

15. As part of his application, MCGUIGAN also submitted his Life Story to KID, which documented his account of his life and motivation to become a foster parent.

16. MCGUIGAN was forty-nine (49) years old and single at the time he applied to KID to become a foster parent.

17. As part of the licensing process, KID was required to conduct a thorough licensing study and background screening of MCGUIGAN and his household members, to determine if he had “good moral character” and was fit to be a foster parent to children in the care and custody of CHILDNET, which included, but was not limited to, conducting fingerprinting, local criminal record checks through local law enforcement agencies, abuse history checks, civil record checks, compiling his social history and medical history summaries, and assessing his parenting experience, marital status and other significant relationships, and motivation to foster a child.

18. In his foster parent application and life story, MCGUIGAN made many misrepresentations, including, but not limited to the following:

- a. He had never been married, been in an intimate relationship, or lived with anyone in an intimate relationship, when in fact he had ended a ten year relationship with a sexual partner a few years earlier who shortly thereafter committed suicide;
- b. He had not had contact with his biological father, John J. “Sean” McGuigan, in over twenty (20) years, when in fact he had contact with him and knew he was a child molester; and
- c. None of his family members had ever been sexually involved with a child, when in fact he was a child molester himself and his father was a convicted sex offender.

19. KID failed to complete the required criminal record checks through local law enforcement agencies, despite having knowledge of MCGUIGAN’s prior residences and having knowledge that he had lived at other addresses in Broward and Palm Beach Counties.

20. Had KID exercised reasonable care in conducting its required fingerprinting and local criminal record checks through local law enforcement agencies for MCGUIGAN, and had CHILDNET exercised reasonable care in reviewing KID’s licensing process, KID and

CHILDNET would have known that MCGUIGAN did not possess good moral character and was not fit to be a foster parent:

- a. MCGUIGAN had been arrested and charged for possession of cocaine in Boca Raton, Florida;
- b. MCGUIGAN had been investigated by the Delray Beach Police Department and the City of Fort Lauderdale for lewd and lascivious acts after a minor male child disclosed that MCGUIGAN showed him a pornographic picture of a child on a computer and asked him to perform sex acts; and
- c. MCGUIGAN lied in his application to be a foster parent and had been in a long-term, intimate relationship and cohabitated with another individual for ten years who subsequently committed suicide after their break-up.

21. MCGUIGAN also made multiple references in his application and life story to his “godson” who he “co-parented” and described their relationship in detail. He stated in his application that his godson stayed over his home several nights a week from the age of five (5) until age eleven (11).

22. MCGUIGAN further stated in his application and life story that he preferred a male child between the age of five (5) and twelve (12) years old and preferred a single child, but if the child had a sibling not placed with MCGUIGAN, then that would be fine.

23. Had KID exercised reasonable care in assessing MCGUIGAN’s social history and parenting experiences, KID would have contacted MCGUIGAN’s “godson,” the only known child listed in his application with whom he had a parental relationship, and the godson’s biological mother, and KID would have known that MCGUIGAN made misrepresentations on his application and was not fit to be a foster parent.

24. MCGUIGAN’s representations that at the age of forty nine (49), he had never been in an intimate relationship nor had he lived with anyone in an intimate relationship, and his representations that he preferred a male single child between the age of five (5) and twelve (12),

were further red flags that should have immediately alerted KID and CHILDNET to engage in further assessment of MCGUIGAN prior to recommending him for foster parent licensure.

25. On or about May 30, 2008, KID completed its Licensing Narrative for MCGUIGAN, in which KID documented that MCGUIGAN had lived and worked in Delray Beach, had never lived with anyone in an intimate relationship, had cleared his local criminal records checks of the Broward Sheriff's Office and Margate Police Department, and recommended that he be licensed as a foster parent for two male or female children.

26. KID failed to complete an adequate licensing study and background screening of MCGUIGAN and failed to discover his drug abuse history, criminal history, history of alleged child molestation, and cohabitation with another individual for ten years who committed suicide shortly after their relationship ended, all of which would have immediately alerted KID that he had lied on his application, was a danger to children, was not of good moral character and should be disqualified from becoming a foster parent.

27. On or about June 2, 2008, CHILDNET received MCGUIGAN's foster care application and accompanying documentation from KID which recommended that he be licensed as a foster parent.

28. As part of the licensing process, CHILDNET was required to review the licensing application of prospective foster parents submitted by KID, verify compliance with licensing standards and completeness of all supporting documents, and request additional information to ensure the application met minimum licensing requirements.

29. As further part of the licensing process, if an application had insufficient or missing documentation, CHILDNET was required to send a review checklist to KID, noting any deficiencies, follow up, or additional information required to meet minimum licensing standards.

30. CHILDNET, however, failed to verify KID's compliance with licensing standards and the completeness of all supporting documents KID submitted to CHILDNET, as the License Checklist KID submitted to CHILDNET only referenced two local criminal records checks for MCGUIGAN when it was known to KID and CHILDNET that MCGUIGAN had lived at residences in various jurisdictions in Palm Beach County and Broward County, and other counties out of the State of Florida.

31. Upon completing the licensing study and background screening of MCGUIGAN, CHILDNET was required to certify in writing that MCGUIGAN met the licensing requirements and recommend to DCF whether his foster parent license application should be granted or denied.

32. On or about June 11, 2008, CHILDNET completed its Licensure Review of MCGUIGAN's foster care application and recommended that MCGUIGAN be licensed as a foster parent.

33. CHILDNET failed to exercise reasonable care in reviewing MCGUIGAN's foster care application, verifying compliance with licensing standards and completeness of all supporting documents, and noting any deficiencies, follow up, or additional information required to meet minimum licensing standards. Further, the application was missing critical documentation, including but not limited to, required local criminal record checks through local law enforcement agencies for all addresses where he had lived, and CHILDNET failed to require KID to follow up.

34. Based upon KID and CHILDNET's recommendations, MCGUIGAN was licensed as a foster parent effective June 17, 2008, with a licensing capacity for two (2) children.

35. Between October 13, 2008 and March 20, 2009, Gabriel Myers, a known victim of sexual abuse and other behavioral problems, was placed in the foster home of MCGUIGAN.

36. During his placement, Gabriel Myers' behavior significantly deteriorated in large part due to MCGUIGAN's inappropriate parenting, so that on or about March 20, 2009, MCGUIGAN submitted a thirty (30) day notice requesting that Gabriel Myers be removed from his home.

37. It was documented and known by KID and CHILDNET that Gabriel Myers' disruptive behaviors escalated during his placement and after his removal from MCGUIGAN's foster home.

38. On or about April 16, 2009, within days after his removal from MCGUIGAN's foster home, Gabriel Myers committed suicide.

39. On or about June 16, 2009, KID completed its Relicensing Home Study for MCGUIGAN, recommending that he be relicensed.

40. KID documented that MCGUIGAN was "a very good foster parent" and that there had been no licensing concerns for his home, despite knowing that MCGUIGAN had engaged in inappropriate punishment of Gabriel Myers while he lived in his home only months before and that Gabriel Myers had committed suicide less than a month after he was removed from MCGUIGAN's foster home.

41. Upon information and belief, CHILDNET completed its relicensure review of MCGUIGAN's foster parent license, recommending that it be renewed, despite knowing that Gabriel Myers had resided in MCGUIGAN's home and had committed suicide shortly after his removal.

42. On or about June 17, 2009, based on the recommendations of KID and CHILDNET, MCGUIGAN's foster parent license was renewed for the 2009 through 2010 licensing year, with a licensing capacity for two (2) children.

43. On or about June 17, 2010, based on the recommendations of KID and CHILDNET, MCGUIGAN's foster parent license was renewed for the 2010 through 2011 licensing year, with a licensing capacity for three (3) children.

44. On or about August 25, 2010, upon being placed in state custody, CHILDNET placed R.S. in the foster home of MCGUIGAN.

45. On or about September 17, 2010, a Comprehensive Behavioral Health Assessment was completed for R.S., documenting that the seven-year old had no history of sexual abuse and no risk of sexually abusive behaviors.

46. On or about September 18, 2010, KID performed an assessment that identified that R.S. had important mental health needs that required specialized treatment, which should have immediately raised concerns to KID and CHILDNET as to whether R.S.'s continued placement was appropriate.

47. On or about May 6, 2011, DCF received a report through the Florida Abuse Hotline alleging that a former Massachusetts foster child who was sexually victimized twenty three (23) years ago by MCGUIGAN's father, John J. "Sean" McGuigan, disclosed that he was also sexually abused by MCGUIGAN for several months when he was ten or eleven years old. The report further documented that John J. "Sean" McGuigan had been arrested and convicted for sexual abuse.

48. On this same date, R.S. was removed from MCGUIGAN's foster home.

49. During DCF's investigation, investigators determined that MCGUIGAN had falsified his foster care application by not disclosing that he had been in a relationship, that he had a drug arrest, and that his father had been arrested for sexual abuse of a child.

50. On or about August 10, 2011, MCGUIGAN notified KID that he would not be pursuing re-licensure of his foster home.

51. On or about December 12, 2011, DCF received a report through the Florida Abuse Hotline alleging that R.S. disclosed that he had been sexually abused by MCGUIGAN while under his care, and this report was closed with indicators of sexual abuse.

52. R.S. was groomed and sexually assaulted by MCGUIGAN, which resulted in R.S. being emotionally harmed and becoming sexually reactive.

COUNT I – NEGLIGENCE OF KIDS IN DISTRESS, INC.

53. Plaintiff hereby realleges paragraphs 1 – 2, 4 – 27, 30 and 34 – 52 as if fully set forth herein.

54. At all times material hereto, KID had the following statutory, contractual, and common law duties:

- a. Ensure the health, safety, and well-being of all children in the state who are cared for by family foster homes in Broward County, including R.S., in accordance with § 409.175, Florida Statutes;
- b. Ensure that children placed in foster homes in Broward County, including R.S., were protected from abuse and neglect in accordance with § 409.175, Florida Statutes;
- c. Conduct an appropriate screening by assessing MCGUIGAN's background to determine that he had "good moral character" including, but not limited to making employment history checks, check of references, local criminal records check through local law enforcement agencies, fingerprinting, statewide criminal records check through the Florida Department of Law Enforcement, federal criminal records through the Federal Bureau of Investigation and abuse registry clearance in accordance with § 409.175 and § 435.04, Florida Statutes and Florida Administrative Code Rules 65C-13.025, 65C-13.023 and 65C-15.023;
- d. Conduct an appropriate screening by assessing MCGUIGAN's motivation for applying to become a foster parent, social history including background and family history, marital status and other significant relationships, medical history, and parenting experience in accordance with § 409.175,

Florida Statutes and Florida Administrative Code Rules 65C-13.025 and 65C-15.024;

- e. Conduct a licensing study of MCGUIGAN and certify to CHILDNET that the potential foster home met all DCF licensing requirements in accordance with § 409.175, Florida Statutes and Florida Administrative Code Rules 65C-15.023 and 65C-15.024;
- f. Complete scheduled and unannounced visits to foster homes in Broward County to investigate and evaluate compliance with licensing requirements in accordance with Florida Administrative Code Rule 65C-15.004;
- g. Conduct an annual re-licensing study in accordance with the requirements of § 409.175, Florida Statutes and Florida Administrative Code Rule 65C-15.025;
- h. Recommend denial, suspension, and/or revocation of a foster home license upon discovery that the applicant lied or otherwise provided inaccurate or false information during the application process in accordance with § 409.175, Florida Statutes;
- i. Recommend denial, suspension, and/or revocation of a foster home license based upon an intentional or negligent act materially affecting the health or safety of children in the home in accordance with § 409.175, Florida Statutes;
- j. Make appropriate matches between children and placements and not place foster children in inappropriate foster homes;
- k. Monitor, supervise, and manage foster homes in Broward County in accordance with Florida Administrative Code Chapters 65C-13 and 65C-15; and
- l. Continuously assess the safety of children placed in foster homes it licensed and supervised in accordance with Florida Administrative Code Rule 65C-15.025 and 65C-15.004.

55. At all times material hereto, KID breached the above stated duties and allowed MCGUIGAN, an alleged child molester and person of poor moral character, to become and remain a foster parent, place R.S. to be placed with MCGUIGAN who subsequently groomed, molested and sexually assaulted R.S.

56. As a direct and proximate result of KID's negligence, R.S. has sustained damages,

including but not limited to bodily injury and resulting pain and suffering, mental anguish, loss of capacity for the enjoyment of life, and expenses of therapeutic and psychiatric treatment. The losses are permanent and will continue in the future.

WHEREFORE, Plaintiff R.S. demands judgment for damages against the Defendant, KIDS IN DISTRESS, INC., for compensatory damages, costs, and all other such relief as the Court may deem just and proper.

COUNT II – NEGLIGENCE OF CHILDNET, INC.

57. Plaintiff hereby realleges paragraphs 1 – 2 and 4 – 52 as if fully set forth herein.
58. At all times material hereto, CHILDNET had the following statutory, contractual, and common law duties:
 - a. Ensure the health, safety, and well-being of all children in the state who are cared for by family foster homes in Broward County, including R.S., in accordance with § 409.175, Florida Statutes;
 - b. Ensure that children placed in foster homes in Broward County, including R.S., were protected from abuse and neglect in accordance with § 409.175, Florida Statutes;
 - c. Verify compliance with licensing standards and completeness of all supporting documentation by ensuring that KID conducted an appropriate screening by assessing MCGUIGAN's background, including, but not limited to, employment history checks, check of references, local criminal records check through local law enforcement agencies, fingerprinting, statewide criminal records check through the Department of Law Enforcement, federal criminal records through the Federal Bureau of Investigation and abuse registry clearance in accordance with § 409.175 and § 435.04, Florida Statutes, Florida Administrative Code Rules 65C-13.025, 65C-13.023, and 65C-15.023 and CHILDNET's Operating Procedures;
 - d. Verify compliance with licensing standards and completeness of all supporting documentation by ensuring that KID conducted an appropriate screening by assessing MCGUIGAN's motivation for applying to become a foster parent, social history including background and family history, marital status and other significant relationships, medical history, and parenting experience in accordance with § 409.175, Florida Statutes, Florida Administrative Code Rules 65C-13.025 and 65C-15.024 and

CHILDNET's Operating Procedures;

- e. Certify to DCF that the potential foster home met all DCF licensing requirements in accordance with § 409.175, Florida Statutes, Florida Administrative Code Rules 65C-15.023 and 65C-15.024 and CHILDNET's Operating Procedures;
- f. Verify compliance with licensing standards and completeness of all supporting documentation by ensuring that KID conducted an annual re-licensing study in accordance with the requirements of § 409.175, Florida Statutes, Florida Administrative Code Rule 65C-15.025 and CHILDNET's Operating Procedures;
- g. Send a review checklist to KID, noting any deficiencies, follow up, or additional information required to meet minimum licensing standards if an application submitted by KID had insufficient or missing documentation in accordance with CHILDNET's Operating Procedures;
- h. Recommend denial, suspension, and/or revocation of a foster home license upon discovery that the applicant lied or otherwise provided inaccurate or false information during the application process in accordance with § 409.175, Florida Statutes and CHILDNET's Operating Procedures;
- i. Recommend denial, suspension, and/or revocation of a foster home license based upon an intentional or negligent act materially affecting the health or safety of children in the home in accordance with § 409.175, Florida Statutes and CHILDNET's Operating Procedures;
- j. Make appropriate matches between children and placements and not place foster children in inappropriate foster homes;
- k. Appropriately case manage and ensure the safety and well-being of all children, including R.S. in its care in all of his placements;
- l. Monitor KID's licensure and relicensure of foster homes by ensuring that KID monitor, supervise, and manage foster homes in Broward County in accordance with Florida Administrative Code Chapters 65C-13 and 65C-15 and CHILDNET's Operating Procedures; and
- m. Continuously assess the safety of children placed in foster homes it licensed and supervised in accordance with Florida Administrative Code Rules 65C-15.025 and 65C-15.004.

59. At all times material hereto, CHILDNET breached the above stated duties and allowed MCGUIGAN, an alleged child molester and person of poor moral character, to become

and remain a foster parent who subsequently groomed, molested and sexually assaulted R.S while failing to appropriately case manage and ensure the safety and well-being of R.S.

60. As a direct and proximate result of CHILDNET's negligence, R.S. has sustained damages, including but not limited to bodily injury and resulting pain and suffering, mental anguish, loss of capacity for the enjoyment of life, and expenses of therapeutic and psychiatric treatment. The losses are permanent and will continue in the future.

WHEREFORE, Plaintiff R.S. demands judgment for damages against the Defendant, CHILDNET, INC., for compensatory damages, costs, and all other such relief as the Court may deem just and proper.

COUNT III – BATTERY BY MICHAEL MCGUIGAN

61. Plaintiff hereby realleges paragraphs 1 – 6, 12, 14 – 16, 18, 20 – 22, 34 – 36, 38, and 42 – 52 as if fully set forth herein.

62. During the time MCGUIGAN was R.S.'s foster parent, between August 25, 2010 and May 6, 2011, MCGUIGAN molested and sexually battered R.S.

63. As a result of the sexual molestation, R.S. has suffered physical trauma, invasion of his person, has suffered and continues to suffer mental and emotional anguish, insecurity, self-revulsion, damage to his self-esteem and self-worth, shame and humiliation, and medical bills. The losses are permanent and continuing, and he will suffer the losses in the future.

WHEREFORE, Plaintiff R.S. demands judgment for damages against the Defendant, MICHAEL MCGUIGAN, for compensatory damages, costs, and all other such relief as the Court may deem just and proper.

**COUNT IV – INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS
BY MICHAEL MCGUIGAN**

64. Plaintiff hereby realleges paragraphs 1 – 6, 12, 14 – 16, 18, 20 – 22, 34 – 36, 38,

and 42– 52 as if fully set forth herein.

65. MCGUIGAN sexually molested and assaulted R.S. while he resided in MCGUIGAN's foster home.

66. The foregoing acts by MCGUIGAN, including but not limited to, grooming, touching, fondling, and sexually molesting R.S., caused the minor to suffer severe mental anguish and emotional distress, and caused the minor to engage in sexually reactive behaviors.

67. Said conduct by MCGUIGAN goes beyond the bounds of human decency, and was outrageous.

68. As a result, R.S. has suffered physical trauma, mental and emotional anguish, insecurity, self-revulsion, damage to his self-esteem and self-worth, shame and humiliation, and medical bills. The losses are permanent and continuing, and he will suffer the losses in the future.

WHEREFORE, Plaintiff R.S. demands judgment for damages against the Defendant, MICHAEL MCGUIGAN, for compensatory damages, costs, and all other such relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all issues so triable in this case.

DATED this 5th day of May, 2015.

TALENFELD LAW
Attorneys for Plaintiff
Bank of America Plaza
1776 N Pine Island Road, Suite 222
Fort Lauderdale, Florida 33322
Telephone: 754-888-5437
Facsimile: 954-644-4848

By: / s / Howard M. Talenfeld
HOWARD M. TALENFELD
Florida Bar No. 312398
RAYNI A. RABINOVITZ
Florida Bar No. 106162